

Guidance Note on the Vetting and Barring Scheme

The Safeguarding Vulnerable Groups Act (SVGA) 2006 has been introduced to strengthen the regulation of those working with children and vulnerable adults. As a result the vetting and barring scheme has been introduced ("VBS").

Who will be caught by the VBS?

From November 2010, anyone who wishes to work with children or vulnerable adults in a regulated activity, or those switching to new regulated roles will be required by law to register with the Independent Safeguarding Authority (ISA). Employers and regulated activity providers will be legally required to comply with several obligations under the VBS. If they fail to do so they may face criminal liability or a fine of up to £5,000.

What is a regulated activity?

The definition of "Regulated activity" covers anyone working closely with children or vulnerable adults whether paid or unpaid on a frequent (once a week or more), intensive (four days a month or more) or overnight basis. Regulated activity will include providing advice, guidance, or assistance wholly or mainly for children or vulnerable adults.

Those individuals working in a regulated activity will therefore include nurses, carers, teachers, sports coaches and counsellors, etc.

What is the purpose of registering with the ISA?

The purpose of ISA registration is to ensure that from November 2010 all newly employed individuals working within a regulated activity shall be fit to work within that regulated activity. If the individual's application is successful he/she shall become ISA registered, and his/her suitability to work within a regulated activity shall be continuously monitored by the ISA who will rely heavily on information being provided to them by the police, regulated activity providers and employers. The ISA will begin to accept voluntary ISA registration from July 2010. The ISA status of a registered individual can change at any time.

When to register?

- 26th July 2010 – all new recruits or those switching into regulated activity roles **may** register with the ISA.
- From November 2010, all new recruits or those switching into regulated activity roles **must** register with the ISA.
- There will be a transition period for existing members of staff which will commence from 1 April 2011, with

everyone who works in regulated or controlled activity having to register by 31st July 2015.

Who will be responsible for the employee's registration, and is there a fee?

For individuals undertaking paid employment the registration fee will be £64 per person, and will cover an applicant for the duration of their career in a regulated activity. The individual will be responsible for paying the registration fee; however some employers may decide to pay for the registration fee on behalf of their employees as a means of attracting the best employees, or where staff are switching roles.

When will an individual be barred from working within a regulated activity?

When reviewing ISA applications, and whilst reviewing registered individuals' status thereafter, a team of specialist caseworkers will decide on a case by case basis whether it is appropriate to bar an individual from working with children and/or vulnerable adults.

All individuals (aged 18 or over) who have committed sexual offences against children and other specified sexual and violent offences will be placed on the barred list automatically. A barred person cannot engaged in a regulated activity and an individual who has been automatically barred will have no right of appeal.

Those who have committed offences which do not fall within the automatically barred categories will be allowed to make representations as to why they should be removed from the list and will have a right to appeal against being included on the barred list.

If an individual is barred, how long will they be barred for?

- If 18 or under – barred for one year.
- 18-24 – barred for five years.
- 24 and over – barred for 10 years.

Once these periods have lapsed the barred individual will be able to seek permission to have their ISA status reviewed. The ISA will then make a decision whether to continue with the barred status or not.

What legal duties do employers have?

- An employer must not knowingly employ, engage, or use as a volunteer, a barred person;

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- From 1 November 2010 an employer must not allow individuals to begin working in a regulated activity unless they are ISA registered. The employer should ensure that they carry out a check on the individual's ISA status on-line prior to employing them.
- Employers in regulated activities will be under a legal duty to refer to the ISA any information about individuals who may pose a risk of harm to a vulnerable group, in particular if the employer removes someone from a regulated activity or controlled activity for allegedly causing harm or posing a risk of harm to a child or vulnerable adult, the employer must pass on full details to the ISA.

Failure to comply with these legal duties could result in the employer being punished by five years imprisonment and/or a fine of up to £5,000.

What is a "controlled" activity, and can a barred individual work in a controlled activity?

Controlled activities are essentially made up of support workers, such as cleaners, admin and catering staff who have any contact with children or vulnerable adults, or the opportunity to have access to health or social services records for children or vulnerable adults.

Whilst it will not be a requirement that job applicants for controlled activities should be registered with the ISA, the employer is still obliged to make a check to see whether the individual is barred. Barred persons should not be employed in any capacity, whether controlled or otherwise.

How should an employer check whether a job applicant is ISA registered/banned?

The job applicant will need to provide the prospective employer with an ISA registration number and their explicit consent to the ISA check being carried out. The employer will then need to use the personal ISA registration number to log onto a secure site within the ISA to check the status of the potential employee or volunteer, specifying which list they wish to check. In the case of an application received within the care home industry, the employer will need to check the applicant's name against the ISA Vulnerable Adults barred list.

What is the duty of referral to the ISA in cases of harm or risk of harm?

- When an employer withdraws permission for an employee to carry on working in a regulated activity for a reason relating to harm or potential harm to a child or vulnerable adult, the employer **must** immediately make the ISA aware of the circumstances of the employee's withdrawal;

- Employers **may** also refer employees to the ISA if they are concerned over the employee's conduct but they do not have enough evidence to substantiate a formal referral. Such referrals should not be made to the ISA if the employer has a reasonable belief that the allegations against the employee are unfounded/malicious;
- Referrals should be made via the ISA downloadable electronic form which can be found on the ISA website;
- Before making a referral it is good practice to consult with adult social services as appropriate.

What changes should we be making to our recruitment process in light of the VBS?

- From 1 November 2010 all new recruits into a regulated activity must be registered with the ISA.
- Employers should make their offer letters conditional upon the employee being ISA registered (for regulated work), not being barred, and no issues being raised by the ISA check.
- Define what roles will be considered as "regulated" and what roles will be "controlled".
- Consider at what point you will carry out the ISA checks and how you will evidence the consent of the applicant.
- CRB checks should still be carried out as normal and references taken up.
- Will you offer to pay the registration fee for successful candidates?
- How will you ensure that agency staff, volunteers and contractors/consultants are registered/have been checked?

What should an employer do if it suspects an employee is guilty of relevant misconduct?

- Where the employer considers that the employee has caused or may cause harm to a child or vulnerable adult, the situation should be dealt with as a formal disciplinary matter.
- The employee should be suspended while investigations into the allegations are carried out (this should be with full pay).
- The referral to the ISA should only be made after the employer has gathered sufficient evidence to support a "reasonable belief based on a reasonable investigation".
- Once a formal disciplinary hearing has been held the employee must decide whether misconduct has occurred and apply the appropriate sanction. It should then notify the ISA of its decision.
- If the employer finds the allegation against the employee to be proven it may dismiss for misconduct. Alternatively,

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it may decide to put the employee on a formal warning. This latter situation must still be referred to the ISA.

What should we do if we receive information from the ISA about an existing member of staff?

The ISA may contact the employer, notifying them that it is minded to bar that individual, pending representations from the individual. The individual will have eight weeks to make representations in writing to the ISA. On notification from the ISA, employers should suspend the employee with pay (unless the contract provides otherwise) until a formal decision has been made by the ISA. The other alternative is to redeploy the employee to a non-regulated activity within the organisation, pending the outcome of the barring decision. This may only be appropriate however if a large part of the employer's business is non-regulated work.

Where the employer has received formal notification from the ISA that the employee has been entered on the barred list, the contract of employment should be terminated immediately on grounds of illegality to avoid the commission of a criminal offence.

What should an employer do if there are persons regularly on their premises who are from outside bodies or suppliers?

The employer should obtain written confirmation from the outside bodies or supplier that the staff in question are non-barred individuals, and are also ISA registered (if appropriate). The employer should ensure that there are appropriate warranties and indemnities in commercial agreements with third parties to cover these matters.

What about malicious and false allegations?

- Only make referrals to the ISA when a person is removed from work due to harm or risk of harm – i.e. when it is clear that the allegation has foundation.
- Ensure that staff undergo training to help them identify malicious and false allegations.
- A person found guilty of providing malicious or false information to the ISA may be subject to defamation and damages claims. Criminal sanctions to include perverting or attempting to pervert the course of justice could also apply.

What steps should we take to reduce risk under the VBS?

- Consider employing a safeguarding officer to police the new system and to ensure that there is a rigorous risk management system in place.
- Provide vulnerable group protection training for relevant staff members.

- Update existing whistle blowing policy so that there is a clear procedure for reporting where there is thought to be a risk of harm to children or vulnerable adults, making it clear that individuals can report concerns if they think that a child or vulnerable adult may have been harmed or may be at risk of harm.
- Develop a clear policy that staff, contractors and suppliers should have a zero policy for abuse and ensuring that there is a rigorous management system in place.
- Update employee's contract of employment to state that if they are barred they may be dismissed immediately, and further, if they fail to inform the employer that they are barred or of any issue with their ISA registration or status then this will be considered under the disciplinary procedure.
- Consider updating contracts of employment to provide for suspension without pay in the event that the employee has to be suspended pending the result of an ISA investigation. The contract could also specify that in the event that the individual is not barred at the conclusion of the investigation, the employer may decide (at their discretion) to reimburse the employee for the pay that they missed out on during their suspension.
- Tighten up recruitment process to ensure that thorough ISA checks are carried out prior to taking on new employees in a regulated activity (following on from 1 November 2010);
- For current employees, and employees who were already working in a regulated activity prior to 1 November 2010, make sure you know, and schedule, when each of these employees will need to be registered (or register them all in one go).
- Keep an eye on any changes in the roles carried out by employees - if an employee is stepping into a regulated activity for the first time this should be noted, and the employee should be registered with the ISA from 1 November 2010.
- Ensure that all management are aware of their duties to refer information to the ISA or Adult Protection in certain circumstances (see above).
- Pay particular attention to disciplinary hearings which are likely to result to a referral being made to the ISA as such a referral may preclude the employee from working in a regulated activity in the future. Consider agreeing to any request for legal representation at such hearings.

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